

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

ENVIRONMENTAL LAW AND POLICY  
CENTER, et al.,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, et al.,

Defendants.

Case No. 3:17-cv-1514

Sr. U.S. District Judge James G. Carr

**STIPULATION AND PROPOSED ORDER  
AS TO ATTORNEYS' FEES AND COSTS**

WHEREAS Plaintiffs Environmental Law and Policy Center and Advocates for a Clean Lake Erie, and Defendants the United States Environmental Protection Agency ("U.S. EPA"), Andrew Wheeler in his official capacity as Administrator, U.S. EPA, and Cathy Stepp in her official capacity as Acting Regional Administrator, U.S. EPA Region 5, through their authorized representatives and without trial or final adjudication of the issues of fact or law with respect to Plaintiffs' motion for attorneys' fees and costs in this lawsuit, ECF No. 57, have reached a settlement thereof.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. The parties agree that this Stipulation is negotiated in good faith and that it constitutes a settlement of Plaintiffs' claim and motion for attorneys' fees and costs that were vigorously contested, denied, and disputed by the parties.

2. Defendants agree to pay Plaintiffs the amount of \$200,000.00 in settlement of Plaintiffs' claim for an award of litigation costs, including attorneys' fees and costs, pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, and the Clean Water Act, 33 U.S.C.

§ 1365(d). Plaintiffs agree that such award encompasses the entire amount of attorneys' fees and costs that they may recover from any party in the above-captioned matter, including all work and costs already performed or incurred in connection with Plaintiffs' Complaint through and including the date of this Stipulation and any additional work or costs performed or incurred after this Stipulation, including but not limited to any work associated with filing a Notice of Satisfaction, except as noted in Paragraph 5, below. Plaintiffs agree that once the above payment is received in accordance with this Stipulation and Order they are not entitled to any further monetary award in connection with this case, except as noted in Paragraph 5, below. Defendants agree that this Stipulation does not resolve any potential claim for attorneys' fees and costs arising out of any other pending or future case, including Case No. 19-cv-00295-JGC (N.D. Ohio), regardless of whether such cases involve similar or overlapping subject matter.

3. The parties, by their duly authorized representatives, agree to this Stipulation and to the entry of the Proposed Order approving this Stipulation, which is incorporated below.

4. Within ten (10) days after entry of an order approving this Stipulation, Plaintiffs will provide Defendants' undersigned counsel with the following information necessary for Defendants to process the payment described in Paragraph 2 above by electronic funds transfer: the payee's name; the payee's address; the payee's bank account number; the account type; the name of the payee's bank; the bank routing transit number ("RTN"); and the payee's tax identification number.

5. Plaintiffs agree that receipt of the payment described in paragraph 2 hereof shall operate as a release of any and all claims for attorneys' fees and costs that Plaintiffs may have against Defendants or any other party under any authority with respect to any aspect of this litigation, except that Plaintiffs reserve their rights in a separate legal action to seek and make

claims for attorneys' fees and costs related to Plaintiffs' Motion for leave to file Supplemental Complaint, ECF. No. 36, insofar as those fees and costs are related to claims made in that separate legal action, and Defendants reserve all arguments that such fees and costs should not be recovered. Plaintiffs further agree that any and all claims Plaintiffs may have for attorneys' fees and costs in this case, except as noted above, are hereby waived once the payment is received in accordance with this Stipulation and Order.

6. Within 10 days after receipt of payment under Paragraph 2 of this Stipulation, Plaintiffs will file a Notice of Satisfaction.

7. This Stipulation has no precedential value as to attorneys' fees and costs in other cases and shall not be cited as precedent in any other attorneys' fees litigation outside of this case.

8. This Stipulation does not constitute an admission by any party to any fact, claim, assertion of violation of any statute or regulation, or defense in this lawsuit. Accordingly, the parties agree that this Stipulation has no precedential value as to any fact, claim, assertion of violation of any statute or regulation, or defense in this lawsuit.

9. The provisions of this Stipulation shall apply to and be binding upon each of the parties including, but not limited to, their officers, directors, servants, employees, successors, and assigns.

10. This Stipulation constitutes the entire agreement of the parties concerning the rights and obligations discussed herein and subject to dispute in this case. No other agreement shall govern the rights of the parties with respect to the matters resolved by this Stipulation, except in accordance with the terms herein.

STIPULATION AS TO ATTORNEYS' FEES AND COSTS AND PROPOSED ORDER  
APPROVED FOR DEFENDANTS:

Dated: August 14, 2019

/s/ Daniel R. Dertke

DANIEL R. DERTKE  
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STIPULATION AS TO ATTORNEYS' FEES AND COSTS AND PROPOSED ORDER  
APPROVED FOR PLAINTIFFS:

Dated: August 16, 2019

/s/ Howard Learner  
HOWARD A. LEARNER  
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PURSUANT TO STIPULATION:

IT IS SO ORDERED.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Honorable James G. Carr  
Senior United States District Judge